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Family Name					
Given Name/s					
Student Number					
Teaching Period	Semester 2, 2017				

LAW513 – Corporate Law	DURATION	
	Reading Time:	10 minutes
	Writing Time:	180 minutes
INSTRUCTIONS TO CANDIDATES		
EXAM CONDITIONS		
<p><u>You may begin writing from the commencement of the examination session.</u> The reading time indicated above is provided as a guide only.</p>		
This is an OPEN BOOK examination		
Any calculator is permitted		
Any handwritten material is permitted		
Any hard copy, English dictionary is permitted (annotated allowed)		
ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED	
Any printed material with the exception of CDU Library books	1 x 20 Page Book	

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QUESTION ONE

[10 Marks]

Good Guys Developments Ltd (“Good Guys”) has not paid any dividends to its shareholders in three years. When it finally paid a dividend it was very low. This was far below the expectations of its shareholders given the extreme profitability of the company in the last four years.

The directors of Good Guys had decided in each of these preceding years to use profits for the sole purpose of expanding the business into low socio-economic areas in order to improve employment and provide budget accommodation for Australians struggling to find accommodation in the soaring property market in the Australian cities.

REQUIRED:

A group of shareholders wants your advice as to what can be done to force the board to declare higher dividends.

QUESTION TWO

[20 Marks]

Tropical Gardens Pty Ltd (Tropical) operates a wholesale nursery growing and selling garden plants in Darwin. Peter, Paul and Mary are the only shareholders and directors. Peter manages the company's day-to-day operations. Paul, who has no formal education, is in charge of the nursery. Mary is a non-executive director who is not actively involved in the management of the company.

Tropical has been very profitable until recently however, six months ago, a competing business opened nearby and since then profits have dropped considerably. Peter thinks that Tropical should move to larger premises in a different area. Without consulting the other directors he starts looking for new premises and he decides the first place he inspects is perfect although the price is more than Tropical can comfortably afford. Peter does not think this will be a problem, because he expects that profits will recover immediately as there is no competition in this area. Peter calls a board meeting and tells Paul and Mary that moving will solve all the company's problems and that the property he has seen is perfect for Tropical. He says they will have to act quickly as there is another interested purchaser.

Peter does not tell Paul and Mary that he only looked at this one property. He is so enthusiastic that both Paul and Mary agree to the proposal even though Mary is doubtful, feeling that they are being rushed into making a decision without being given time to consider other alternatives. Paul agrees to Peter's proposal without really understanding the financial implications.

Tropical purchases the new premises but, because of continuing dry weather, the profits remain low. Mary is becoming worried about her obligations as a director, especially if the financial position deteriorates any further.

REQUIRED:

- (a) Advise Mary about:
 - (i) her position in respect of any breaches of her general law or statutory duty of care and diligence as a director;
 - (ii) whether her decision to agree to the purchase of the new premises would be protected by section 180(2); and
- (b) Advise Peter as to his position in respect of any breaches of his duty of care to the company, and
- (c) What is the rationale of the '**business judgment rule**'? Does it allow directors too many opportunities to avoid the consequences of poor business decisions?

QUESTION THREE

[20 Marks]

Jack and Jill are directors of Northern Constructions Pty Limited, a Darwin based company that has operated a successful property development business since 2013. In recent months, however, because of the slowing property market and the rising costs of building, the company has been experiencing liquidity problems. Creditors are making demands for outstanding payments and some suppliers have stopped credit to the company. In addition to the building equipment, the company's owns an apartment on Smith Street, Darwin and a block of land in the industrial area at Winnellie.

In December 2016 Jill's wealthy real estate sister, Raine Hooker, loaned the company \$500,000 dollars on a short term basis to help tie them over their liquidity problems over the December break. In February 2017 Raine realised that Jack and Jill were experiencing serious financial and relationship problems and had concerns about recovering her cash. She asked Jill for security over the company's assets. Using the company's seal, Jill arranged for a mortgage over the city apartment in favour of Raine which was duly registered.

On the 1 April 2017, on an application by an unsecured creditor, the Court ordered the winding up of the company and appointed a liquidator.

In preliminary discussions between the liquidator and the directors as to the quickest way to realise the assets of the company, Jill offers to purchase the unencumbered land at Winnellie from the liquidator for \$300,000, which is slightly below the market price. She argues this would avoid the selling costs and allow for a quick return to creditors.

Jack complains that Jill, being a director, should not be allowed to purchase the land and that the security to her sister is voidable. Jill retorts that the company is in the financial mess because of Jack's extravagant spending including the recent purchase of a Ferrari sports car for \$800,000 when the company could least afford it.

REQUIRED:

You are asked to advise the liquidator in respect of each of the above issues.